

**Folkestone & Hythe District
Council
Housing Benefit,
Council Tax,
Non-Domestic Rate
and
Housing
Anti-Fraud Policy**



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1 Background

- 1.1 Folkestone & Hythe District Council is committed to the prevention and detection of Housing Benefit, Council Tax, Housing and Non-Domestic Rate fraud. This is to ensure the correct levels of benefit and reduction are paid and the correct levels of Non-Domestic Rates and Council Tax liability are collected from its residents, ensuring the most vulnerable in society correctly receive the support required through Council Tax Reduction and relevant discounts and exemptions. It also protects the Council from abuse of the right to buy scheme and fraudulent housing applications or behaviour.
- 1.2 This document describes the Council's anti-fraud policy in relation to Housing Benefit, Housing, Council Tax and Non-Domestic Rates, including the Council's local Council Tax Reduction Scheme. It is intended to inform the public of the anti-fraud policy pursued by the Council's Investigation Officers.
- 1.3 Local authorities have a statutory duty to administer and arrange their financial affairs appropriately in accordance with section 151 of the Local Government Act 1972. It is therefore extremely important that the Council applies an appropriate and effective antifraud process as part of the administration of Housing Benefit and Council Tax.
- 1.4 In developing this policy it is the Council's objective to prevent, detect, correct, punish and deter fraudulent activity in relation to Housing Benefit, Housing, Council Tax and Non-Domestic Rates.

2 Equalities

- 2.1 The policy meets the Council's obligations under the Equality Act 2010. The process will not discriminate for or against any individual according to gender, race, sexuality, gender identity, age, disability or belief.
- 2.2 Investigation Officers will always act with respect to pertinent legislation and without prejudice when executing its procedures and policies, ensuring that all suspects of fraud will receive clear and understandable correspondence making them aware of their legal rights and informing them of all the possible outcomes to an investigation.

3 Legislation and Governance

- 3.1 All relevant Officers are expected to comply with appropriate legislation, codes of practice and corporate policies when executing duties in relation to fraud.
- 3.2 The following codes, legislation and policies are adhered to in order to succeed in executing the fraud process:
 - Police and Criminal Evidence Act 1984
 - Local Government Finance Act 1992
 - Folkestone & Hythe District Council Equality and Diversity Policy

- Social Security Administration Act 1992 (as amended by the Local Government Finance Act 2012)
- Criminal Procedure and Investigations Act 1996
- Social Security Administration (Fraud) Act 1997
- Data Protection Act 1998
- Human Rights Act 2000
- Regulation of Investigatory Powers Act 2000
- Social Security Fraud Act 2001
- Welfare Reform Act 2012
- The Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013
- Folkestone & Hythe District Council's Council Tax Reduction Scheme
- Police and Criminal Evidence Act (PACE)
- Folkestone & Hythe District Council's Health and Safety Policy
- Fraud Investigation Procedures
- DWP Single Fraud Investigative Service Memorandum of Understanding
- The Code for Crown Prosecutors

This is not an exhaustive list and therefore all officers should act in accordance with any appropriate legislation, corporate/departmental policies and codes of practice that are relevant to their duties in relation to this policy.

4 Definition of Fraud

- 4.1 For the purposes of this policy fraud is perceived to be:
- Knowingly or dishonestly making a false statement or representation with intent to gaining a financial advantage through Housing Benefit or a Council Tax/Non-Domestic Rate reduction, discount, or exemption; or
 - Knowingly or dishonestly failing to give prompt notice of a change of circumstances, with intent to gaining a financial advantage through Housing Benefit or a Council Tax/Non-Domestic Rate reduction, discount, or exemption.
- 4.2 For the purposes of this policy corruption is perceived to be:
- The soliciting or accepting of an inducement or reward that may influence the action of a person; or
 - Causing or allowing someone to produce false documents/information or causing or allowing someone in failing to notify a change with intent to gaining a financial advantage through a Housing Benefit or a Council Tax/Non-Domestic Rate reduction, discount, or exemption.
- 4.3 For the purposes of housing cases, the strategy is designed to:
- Deter people from trying to commit fraud,
 - Stop fraudulent housing applications from entering our systems,
 - Find any fraudulent housing applications already in the system,
 - Recover fraudulently obtained property or property that has been abandoned, passed on or illegally sub-let, and
 - Prevent abuse of the right to buy scheme.

- 4.4 Types of housing/tenancy fraud can include:
- False applications for Housing,
 - False claims for succession,
 - Key selling,
 - Subletting, parting with possession or non-occupation, and
 - Right to buy fraud.
- 4.5 The Council will approach the investigation of both fraud and corruption in the same manner within the boundaries of their procedures and the constraints of appropriate legislation.

5. Service aims and structure

- 5.1 The Council Tax, Benefits & Welfare service will appoint officers who are authorised to obtain specific information in relation to Housing Benefit or a Council Tax/Non-Domestic Rate reduction, discount and exemption investigations.
- 5.2 An authorised officer is legally entitled to obtain information in order to make relevant enquiries or examine records relating to any person claiming Housing Benefit or a Council Tax/Non-Domestic rate reduction, discount or exemption.
- 5.3 In addition and subject to proportionality, the employment and financial records of a person who is related to an investigation by association may also be checked, for example partners of claimants. A local authority can prosecute an employer or any third party that obstructs an authorised officer in executing their duties.
- 5.4 Investigation Officers employed by the Council will be appointed as authorised officers in accordance with the law. An authorised officer is able to obtain, when appropriate and proportionate, information regarding the personal details of an individual suspected of or party to an offence relating to Housing Benefit, Council Tax or Non-Domestic Rates fraud. Information may be requested from establishments, businesses or institutions in order to obtain the relevant circumstances of an individual suspected of any offences in relation to the above-mentioned cases.
- 5.5 The aims of the fraud investigation function will be achieved by:
- Continuously developing and enhancing systems to prevent, detect and investigate Housing Benefit, Council Tax and Non-Domestic Rate fraud;
 - Monitoring and reviewing recent and past investigations;
 - Ensuring that Investigation Officers receive DWP Professionalism in Security (Pins) training;
 - Working together with counter fraud staff in other agencies, most specifically with the DWP Single Fraud Investigation Service (SFIS) and the Kent Intelligence Network (KIN);
 - Educate other stakeholders about fraud awareness and counter fraud activities;

- Encouraging the reporting of suspicions of fraudulent benefit activity.

6 Prevention and detection of fraud

- 6.1 Staff are expected to contribute to the authority's anti-fraud culture by being vigilant in their work and referring any suspected fraud. To reduce the risk of fraud and error it is vital that the qualifications and employment histories of potential recruits are comprehensively checked. Officers with access to certain data should also sign a declaration covering any interests that may conflict with their work, for example, receiving Housing Benefit and Council Tax Reduction, working on noted friends or family accounts or acting as a landlord or agent. Officers are subject to training on anti-fraud, corruption and whistle blowing policies.
- 6.2 All Investigation Officers will undertake training in order to ensure they carry out their duties in accordance with recognised standards for Fraud Investigation. In addition, they will undertake any training required by the Department for Work and Pensions in order to use specific powers under the Social Security Administration Act and Social Security Fraud Act (Authorised Officer powers) for investigations relating to Council Tax Reduction.
- 6.3 As part of the UK government's welfare reform programme the Single Fraud Investigation Service (SFIS) brings together the combined expertise of the Welfare Benefit Fraud investigation work undertaken by DWP Fraud Investigation Service (FIS), LA Benefit Fraud Investigators and HMRC in relation to Tax Credits into a single service. The responsibility for investigation into Housing Benefit fraud sits with SFIS. The Council will remain responsible for accepting referrals and assisting SFIS with their investigations as required in a joint working agreement.
- 6.4 Investigation Officers are trained to execute appropriate and proportionate use of directed surveillance in accordance with the Regulation of Investigatory Powers Act 2000. Directed surveillance will be carried out in an investigation where it is deemed appropriate and proportionate.
- 6.5 The Council will be proactive in identifying and using appropriate use of intelligence sources through effective and prudent use of data. By maintaining a single point of contact, information and intelligence will be lawfully, consistently and reliably obtained and disseminated to and from internal and external agencies in order to support criminal investigations. Information and Intelligence will be obtained from a number of sources such as credit agencies, financial institutions, government agencies, Council officers the police and the public.
- 6.6 The Council promote the use of a dedicated fraud hotline to assist members of the public in reporting potentially fraudulent activity in the district. The public will also be referred to SFIS for Housing Benefit referrals as appropriate. Details, including a dedicated email address are publicised on the Council's website.

- 6.7 All claimants are provided with documentation written in plain English. In addition, information will be written in a clear and understandable format to ensure that claimants are aware of their responsibilities to provide accurate and timely information, in relation to their current circumstances and changes of circumstances. When appropriate, support will be made available to translate documents.
- 6.8 The Council reserve the right to publicise the results of individual cases, which have resulted in a conviction in the criminal courts. However, details of individuals or individual cases that are not subject to public interest will not be communicated to any third party.

7 Sanctions and Prosecutions

- 7.1 The power to apply a sanction or prosecute will only be based when appropriate. Investigators will give careful consideration of taking further action against anyone who has committed fraud in order to obtain Council Tax or on Domestic rates reductions, discounts or exemptions. The details of each case will be taken into account and measured against the evidential and public interest test stated in the Code for Crown Prosecutors. Any case failing to meet the requirements associated with either test should not be considered suitable for sanction or prosecution.
- 7.2 The power to apply a sanction or prosecute with regards to Housing Benefit will be led by DWP through SFIS. Recommendations can be made to the Council for further action as required.
- 7.3 In all cases investigated an Investigation Officer will supply an investigation report to the Council Tax, Benefits & Welfare Manager and Team Leaders showing the officer's actions, conclusions and recommendations regarding the investigation. The Council Tax, Benefits & Welfare Manager and Team Leaders will then recommend action required on the relevant claim/account. When the impact of any recommendations are known, the Investigation Officer will recommend if any further action is relevant. The Council Tax, Benefits & Welfare Manager will make the final decision as to whether it is appropriate and proportionate to take further enforcement action against the person or persons subject to investigation. Further enforcement action means prosecution or offering an alternative sanction (administrative penalty).
- 7.4 In certain cases no criminal proceedings will be taken against the person who has committed an offence and caused or could have caused excess Council Tax Reduction or avoided full charge due to an award of a discount, exemption or reduction for Council Tax or Non-Domestic Rates. Any excess Council Tax/Non-Domestic Rates that has been awarded to a person will be returned/repaid to the individual's/company's liability whether it is subject to an offence or not. No further enforcement action will be taken against a person who has committed an offence if it is decided that it is not in the public interest to pursue criminal proceedings or a sanction.

8 Civil Penalties for Incorrect Statements

- 8.1 Even if it is determined that the Council will not take any sanction or prosecution action in respect of offences committed, they may still consider issuing a civil penalty for making an incorrect statement or failing to notify a change of circumstances.
- 8.2 The Council may consider imposing a penalty of £70 on a person where:
- The Person makes an incorrect statement or representation, or negligently gives incorrect information or evidence in or in connection with an application or in connection with the award of a reduction under the Council Tax Reduction scheme;
 - Fails to take reasonable steps to correct the error;
 - The error results in an award of a council tax reduction which is greater than the amount to which the person was entitled;
 - The person has not been charged with an offence or cautioned, or been given an administration penalty; or
 - Without reasonable excuse, fails to give a prompt notification of a relevant change of circumstances to the authority;
 - The failure results in an award of a council tax reduction which is greater than the amount to which the person was entitled; or
 - The person has not been charged with an offence or cautioned, or been given an administration penalty.

9 Caution

- 9.1 A caution is a non-statutory disposal for offenders aged 18 years or over. It is administered as an alternative to prosecution. A caution can only be considered where there is sufficient evidence to justify instituting criminal proceedings and the offender has admitted the offence during an interview under caution (IUC). If the offender is subsequently prosecuted for an offence relating to excess Council Tax the caution may be cited in Court.
- 9.2 Cautioning is based on the principle that no authority is under an obligation to prosecute when offences have been established. Council procedure for cautioning is based on guidelines issued by the Ministry of Justice for the use of simple cautions by police officers and Crown Prosecutors. The caution is not maintained on police records and is not required to be declared to any third party by the recipient. The aims of the caution are:
- To offer a proportionate response to low level offending where the offender has admitted the offence;
 - To deliver swift, simple and effective justice that carries a deterrent effect;
 - To record an individual's criminal conduct for possible reference in future criminal proceedings relating to Council Tax Reduction offences; and
 - To reduce the likelihood of re-offending;
- 9.3 Circumstances where a caution might be appropriate are:

- The person is 18 or over;
- The person has admitted to an offence in an interview under caution;
- The person has not offended before;
- Criminal proceedings are not the first option; or
- Penalty action is not appropriate

- 9.4 The Council may consider administering a caution as an alternative to prosecution providing all the following requirements have been met:
- The evidential criteria for prosecution are satisfied;
 - A caution is appropriate for the offence and to the person, having given consideration to the offender's previous record relating to similar offences; and
 - The person has fully admitted the offence during an interview under caution (IUC).

The list of considerations and conditions to offer a caution is not exhaustive.

- 9.5 The decision to offer a caution rests with the local authority dependent on the individual circumstances of a case. If an offender refuses to accept a caution the case may be referred to Legal for consideration of prosecution.

10 Administrative Penalty

- 10.1 The legislation governing the use of a financial penalty as an alternative to prosecution where a person has fraudulently claimed a Council Tax reduction, discount or exemption is contained in section 14C of the Local Government Finance Act 1992. The conditions by which a penalty might be used are described in regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) Regulations 2013.
- 10.2 In accordance with the legislation a penalty may be offered as an alternative to prosecution. The financial penalty is calculated as a percentage of the fraudulently obtained Council Tax Reduction, which is set at;
- 50% of the excess reduction, with a minimum of £100 and a maximum of £1,000;
 - Is for Council Tax Reduction Scheme administration purposes only;
 - Is not a criminal record and therefore, does not affect a person's employment or credit prospects;
 - Remains on record for a period of 5 years; and
 - Would be cited at proceedings should any subsequent offences be committed within the 5 year period.

A person does not have to accept the penalty. However, refusal may lead to the case being referred for a prosecution.

- 10.3 Agreeing to accept the penalty will give offenders immunity from prosecution for identified offences relating to Council Tax Reduction. An offender who has agreed to pay the penalty is entitled to withdraw their agreement within 14

days of signing the original agreement. If an agreement is withdrawn the local authority will be legally entitled to prosecute the offender.

- 10.4 Any case considered appropriate for a penalty must also be suitable for prosecution. Factors considered in deciding whether to offer an administrative penalty as an alternative to prosecution are:
- The evidential criteria for prosecution are satisfied;
 - Any known previous offences for fraud; and
 - The prospect of timely payment.
- 10.5 A penalty is offered to an offender at a specially arranged interview. The penalty will be added to the appropriate person's/company's Council Tax/Non-Domestic Rates liability. All conditions relating to the penalty will be stated at the point of notification. Refusal to accept a penalty or withdrawal from an agreement to accept a penalty will result in an offender losing immunity to prosecution for a Council Tax Reduction offence.

11 Prosecution

- 11.1 Prosecution will be considered against someone who has committed an offence in order to receive a Council Tax/Non-Domestic Rates reduction, discount or exemption. The Council will administer the sanction it deems appropriate with respect to the individual circumstances of each case.
- 11.2 The Fraud Investigator will decide if it is appropriate to recommend prosecution of an offender subsequent to carrying out an evidential and public interest test. An appropriate enforcement action form is completed which, conveys the decision-making process. The Council Tax, Benefits & Welfare Manager will consider each decision and approve as appropriate.
- 11.3 If it is decided that prosecution is the most effective means of dealing with an offence, the Investigation Officer will instruct the Council's Legal team to examine the evidence of a case for suitability in order to pursue or reject legal proceedings. Prosecution of an offender will take place in a Magistrates or Crown Court.
- 11.4 In making a decision to prosecute, the Council must be satisfied there is enough evidence to provide a 'realistic prospect of conviction'. A realistic prospect of conviction is an objective test meaning that a jury, magistrate or judge hearing a case which, is properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence. Evidence must be able to be used in a court of law. It must have been gathered appropriately, in accordance with the law and be from a reliable source.

12. Complaints

- 12.1 The Council's Complaints Procedure will be applied in the event of any complaint received relating to an investigation.

13. Policy review

- 13.1 This policy will be reviewed in line with any changes in legislation or service and as a minimum, every two years. Minor alterations to the policy will be approved by Folkestone & Hythe District Council's Corporate Services Director or Chief Financial Services Officer in consultation with the Cabinet Member responsible for Finance & Governance.

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